

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

RYAN McCREARY,

Plaintiff

v.

CORE CIVIC, *et al.*,

Defendants

Case No. 2:20-cv-01236-APG-BNW

ORDER

I. DISCUSSION

On July 27, 2020, Plaintiff submitted a notice of change of address to the Court. (ECF No. 9). On July 31, 2020, this Court directed Plaintiff to file an application to proceed *in forma pauperis* by a non-prisoner, as it appeared Plaintiff was no longer incarcerated. (ECF No. 11). Upon further review of Plaintiff's notice of change of address at ECF No. 9, the Court has confirmed Plaintiff's new address is that of the Cascade County Sheriff's Department in Great Falls, Montana. As such, the Court directs Plaintiff to either submit a fully complete application to proceed *in forma pauperis* by a prisoner, with complete financial attachments, or pay the full \$400 filing fee for a civil action, no later than **October 2, 2020**.

Under 28 U.S.C. § 1915(a)(2) and Local Rule LSR 1-2, an inmate seeking to begin a civil action in this Court may apply to proceed *in forma pauperis* in order to file the civil action without prepaying the full \$400 filing fee. To apply for *in forma pauperis* status, the inmate must submit all three the following documents to the Court:

- (1) a completed **Application to Proceed in Forma Pauperis for Inmate**, this Court's approved form (i.e. pages 1 through 3 with the inmate's two signatures on page 3),
- (2) a **Financial Certificate** properly signed by both the inmate and a prison or jail official (i.e. page 4 of this Court's approved form), and

(3) a copy of the **inmate's prison or jail trust fund account statement for the previous six-month period**. If Plaintiff has not been at the facility a full six-month period, Plaintiff must still submit an **inmate account statement** for the dates he has been present at the facility.

If Plaintiff has difficulty obtaining **both** a financial certificate and an inmate account statement from prison officials, Plaintiff shall file an affidavit in this case detailing when he requested **both** documents, who he spoke to about the status of **both** documents, who he followed up with after he did not receive **both** documents, and their responses. Therefore, any affidavit provided by Plaintiff must document his efforts with regard to **both** a financial certificate and an inmate account statement, not merely a financial certificate.

In other words, if Plaintiff is unable to acquire the necessary documents from prison officials, after making efforts to do so following receipt of this order, he must provide the Court with an affidavit that demonstrates that he has done all that he could to acquire **both** a financial certificate and an inmate account statement by the Court's deadline. Plaintiff's affidavit should include dates of his requests, dates of his follow-up requests, names of the prison officials that he spoke to about the matter, and their responses. If Plaintiff's affidavit demonstrates that he has done all that was possible to acquire **both** a financial certificate and an inmate account statement, the Court will consider his application to proceed *in forma pauperis* complete.¹

Plaintiff should **not** file multiple letters or objections regarding these requirements as this imposes an unnecessary administrative burden on the Court and delays the ability of the Court to address substantive issues in cases. Plaintiff should simply file one affidavit.

The Court will grant Plaintiff **one final extension** until on or before **October 2, 2020**, to file either a fully complete application to proceed *in forma pauperis* containing all

¹ Plaintiff must still submit the first three pages of the application to proceed *in forma pauperis* on this Court's approved form with his affidavit. If Plaintiff does not submit the first three pages of the application to proceed *in forma pauperis* with the affidavit, the Court will dismiss the case without prejudice for Plaintiff to open a new case when he is able to acquire the required documents.

1 three of the required documents or, alternatively, the first three pages of the application
2 to proceed *in forma pauperis* and an affidavit detailing the efforts he took to acquire both
3 a financial certificate and an inmate account statement from prison officials. Absent
4 unusual circumstances, the Court will not grant any further extensions of time. If Plaintiff
5 is unable to file either a fully complete application to proceed *in forma pauperis* with all
6 three required documents or, alternatively, the first three pages of the application to
7 proceed *in forma pauperis* and an affidavit detailing the efforts he took to acquire both a
8 financial certificate and an inmate account statement from prison officials on or before
9 **October 2, 2020**, the Court will dismiss this case without prejudice for Plaintiff to file a
10 new case with the Court when Plaintiff is able to either acquire all three of the documents
11 needed to file a fully complete application to proceed *in forma pauperis* or, alternatively,
12 the first three pages of the application to proceed *in forma pauperis* and an affidavit
13 detailing the efforts he took to acquire both a financial certificate and an inmate account
14 statement from prison officials.

15 A dismissal without prejudice means Plaintiff does not give up the right to refile the
16 case with the Court, under a new case number, when Plaintiff has either all three
17 documents needed to submit with the application to proceed *in forma pauperis* or,
18 alternatively, the first three pages of the application to proceed *in forma pauperis* and an
19 affidavit detailing the efforts he took to acquire both a financial certificate and an inmate
20 account statement from prison officials. Plaintiff may also choose not to file an application
21 to proceed *in forma pauperis* and instead pay the full filing fee of \$400 on or before
22 **October 2, 2020** to proceed with this case.

23 The Court will retain Plaintiff's civil rights complaint (ECF No. 1-1), but the Court
24 will not file the complaint unless and until Plaintiff timely files either a fully complete
25 application to proceed *in forma pauperis* with all three documents, or, alternatively, the
26 first three pages of the application to proceed *in forma pauperis* and an affidavit detailing
27 the efforts he took to acquire both a financial certificate and an inmate account statement
28 from prison officials, or pays the full \$400 filing fee.

1 **II. CONCLUSION**

2 For the foregoing reasons, IT IS ORDERED that the Clerk of the Court will send
3 Plaintiff the approved form application to proceed *in forma pauperis* by an inmate, as well
4 as the document entitled information and instructions for filing an *in forma pauperis*
5 application.

6 IT IS FURTHER ORDERED that on or before **October 2, 2020**, Plaintiff will either
7 pay the full \$400 filing fee for a civil action (which includes the \$350 filing fee and the \$50
8 administrative fee) or file with the Court:

9 (1) a completed **Application to Proceed in Forma Pauperis for Inmate** on this
10 Court's approved form (i.e. pages 1 through 3 of the form with the inmate's two
11 signatures on page 3),

12 (2) a **Financial Certificate** properly signed by both the inmate and a prison or jail
13 official (i.e. page 4 of this Court's approved form), and

14 (3) a copy of the **inmate's prison or jail trust fund account statement for the**
15 **previous six-month period**. If Plaintiff has not been at the facility a full six-month period,
16 Plaintiff must still submit an inmate account statement for the dates he has been present
17 at the facility.

18 Alternatively, Plaintiff will file with the Court the first three pages of the application
19 to proceed *in forma pauperis* and an affidavit detailing the efforts he took to acquire both
20 a financial certificate and an inmate account statement from prison officials.

21 IT IS FURTHER ORDERED that, if Plaintiff does not file a fully complete
22 application to proceed *in forma pauperis* with all three documents or, alternatively, the
23 first three pages of the application to proceed *in forma pauperis* and an affidavit detailing
24 the efforts he took to acquire both a financial certificate and an inmate account statement
25 from prison officials, or pay the full \$400 filing fee for a civil action on or before **October**
26 **2, 2020**, the Court will dismiss this action without prejudice for Plaintiff to refile the case
27 with the Court, under a new case number, when Plaintiff has all three documents needed
28 to file a complete application to proceed *in forma pauperis*.

1 IT IS FURTHER ORDERED that the Clerk of the Court will retain the complaint
2 (ECF No.1-1) but will not file it at this time.

3 DATED: August 6, 2020

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5 UNITED STATES MAGISTRATE JUDGE
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